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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1964

NO. 334

LOCAL UNION NO. 12405, DISTRICT 50, UNITED MINE WORKERS; JOSEPH J. PIUNTI; ROSS PAVONE; MELVIN WOODRUFF; WAYNE HICKMAN; PASQUALE DE FIORE; DONALD BAKER; HENRY STRACZEK; CARL BAUR; JOHN BRANDT; ODIS PARTIN; NORBERT KOELLING; WALKER WIRTH; WALTER NIEDERT; JIMMY NIEDERT; WILLARD JONES; LEO DOUD, SR.; JOHN MARTISEK; GERALD HAYES; JEFF YOUNG; JERRY MIDDLETON; THEODORE SCHROEDER; MARTIN WOZNY; LOUIS PINO; RUDOLPH VANKO; HANS MARQUARDT; JOE GECHUS; HARRY TRAMM; WILLIAM PRALLE; BAZYL KLIMOWICZ; CHARLES WITT; CLEM DENNIS; WILMER KOELLING; GLENN IRWIN; MILLER PRINCE; STANLEY ZAPOTOCZNY; JOE MOBLEY; WALTER NYKIEL; CARL HENSHAW; FRANK DURANCZYK; and EDWARD ROHR,

Petitioners,

vs.

MARTIN MARIETTA CORP., a Maryland Corp.; DISTRICT 50, UNITED MINE WORKERS OF AMERICA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals

for the Seventh Circuit, entered in the above entitled case on March 3, 1964, and the denial by the said Court on April 3, 1964, of a petition for rehearing.

CITATIONS TO OPINIONS BELOW

The District Court rendered no formal opinion and its Findings, Conclusions and Judgment are unreported but are printed at pages 248-255 of the Appendix filed with the Court of Appeals, ten copies of which have been submitted. The opinion of the Circuit Court of Appeals, printed in the Appendix hereto, is reported in 328 F. 2d 945.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 3, 1964. Rehearing was denied on April 3, 1964. This Court on June 25, 1964, granted an extension to file a petition for certiorari until July 31, 1964. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254 (1).

QUESTIONS PRESENTED

1. Is not a court required to direct arbitration of a dispute arising from a Company's laying off of all of its employees and transferring its work elsewhere during the term of a collective bargaining agreement, which, in exchange for a no strike pledge, contains a Company covenant not to withhold any work from its employees pending arbitration and to arbitrate any "differences", "dispute", or "trouble of any kind", where the contract contains ex-

tensive seniority provisions and requires that the work be performed only by employees in the bargaining unit?

2. Does an otherwise arbitrable grievance become non-arbitrable because the International Union (District 50, United Mine Workers) of the Local Union refuses to join in the arbitration request of the Local Union, where the Local Union executed the agreement and administered same and where the International, which also signed the agreement, did so only "on behalf of" the Local Union?

3. In a Section 301 (a) action to enforce the arbitration provisions of a contract, what effect must a Court give to a National Labor Relations Board determination that a Local Union, the plaintiff in such action, is a party to the collective bargaining agreement as against the contention of a company and the Local's International Union that the Local Union is not a party to the agreement?

STATUTE INVOLVED

The statutory provision involved is Section 301 (a) of the Labor-Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. 185. It provides as follows:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT

This matter involves Section 301 (a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. 185. Suit was brought by Local Union No. 12405, (affiliated with District 50, United Mine Workers of America) hereinafter referred to as the "Local", seeking to enforce the arbitration provisions of its collective bargaining agreement with the Martin Marietta Corp.,[1] hereinafter referred to as the "Company". During the term of a collective bargaining agreement, the Company laid off and terminated all of its 41 employees and transferred a substantial portion of the work thereto performed by the employees to other plants of the Company. The employees were not permitted to follow their jobs nor were they transferred to the other locations. The Local and the employees contended that this violated the seniority, union security and other provisions of the collective bargaining agreement and that, at a bare minimum, they were entitled to have their difference and grievance resolved through arbitration in accordance with the terms of the collective bargaining agreement. The Company refused arbitration and suit, joined in by all of the employees affected, was brought.

The collective bargaining agreement involved herein was entered into on May 16, 1961, and was signed by the Local, by the Company and by District 50, United Mine Workers but by the latter "on behalf of Local Union #12405 (the Petitioner herein) of the United Mine Workers of Amer-

1. The actual agreement was entered into by American Marietta Company which later merged with the Martin Company to form the Martin Marietta Corporation (App. 10, 54). The latter assumed all contractual obligations of American-Marietta, including the instant collective bargaining agreement (App. 9-10).

ica." (Pls. Exh. A, App. 33, 261).[2] Its opening paragraph recited that the agreement was "by and between the Pressstite Division, American-Marietta Company . . . and District 50, United Mine Workers of America **on behalf of** Local Union No. 12405 (hereinafter referred to as the 'Union')". (App. 14) (Emphasis supplied) The agreement, by its terms, did not terminate until May 15, 1963 (App. 32).

The Local administered the collective bargaining agreement by itself (App. 81, 83). On rare occasions it was assisted by District 50 which acted only in an advisory capacity (App. 83, 84, 119). Contract demands were formulated by the Local, and, although these demands were shown to District 50 before the first negotiating meeting with the Company, it was the Local rather than District 50 which directed the negotiations and bargaining strategy with the Company (App. 111, 112, 115, 119, 120, 159, 161, 164, 165, 166). The final decision with respect to the rejection or acceptance of the Company's contract proposals lay with the membership of the Local (App. 161-162).

The contract requires that work be performed only by employees in the bargaining unit and contains extensive provisions respecting seniority (App. 15, 20-23, 261). Section VIII (App. 23-26) provides for the maintenance of the status quo during the term of the agreement in the event of any differences. Paragraph A (App. 23-24) commences with a no-strike provision and an agreement on the part of the Union that "pending the adjustment of any dispute" (App. 23) there shall be no "stoppage of work";

2. Pursuant to Rule 21 (3) and (4), Petitioners have filed one certified and nine additional copies of the Appendix together with all of the proceedings in the court below. References to the Appendix will be indicated by the letters "App." followed by the page citation to the pertinent matter. References to the Petition for Rehearing below will be indicated by the letters "Pet. for R'hg." followed by the page citation to the pertinent matter.

similarly, the contract provides that the Company shall not "withhold" any work from the employees pending any dispute." (App. 23). The procedure for handling disputes commences with Paragraph B of Section VIII (App. 24-25) and continues through Paragraph D which requires arbitration (App. 25-26). Paragraph B of said Section requires that should any "differences" or "any local trouble of any kind" arise as to the "meaning and application" of the provisions of the agreement, then the difference or trouble shall be resolved through a series of five steps culminating with "final and binding" arbitration (Para. D, App. 25-26).

The Local first learned of the contemplated cessation of operations in mid September, 1962, when the Company told the Local president that it was shutting down (App. 84, 116). It kept, however, from the Local the fact that a substantial portion of the operations was being transferred to the Company's other plants (App. 84, 87, 89-90). In an effort to help its members in the face of the imminent shutdown, the Local arranged a series of meetings with the Company in September and October, 1962, to explore the possibilities of what could be done for the men (App. 84-85, 86, 87, 88, 90). The Company offered no suggestions, made no proposals at the meetings, and nothing was done for the employees (App. 87, 88, 89). District 50, which participated at the last of the meetings through its field representative, took a position identical with the Company's that there was nothing that could be done (App. 89, 117). District 50's position was reiterated shortly thereafter when its Regional Director told the Local that there was nothing he could do because an employer could shut a plant down the day after it signed a collective bargaining agreement if it chose to (App. 92, 118).

By now it was becoming increasingly clear that the Company was not going out of business, but rather was merely transferring most of its operations. Having received no assistance from District 50 or the Company, the Local in November, 1962, consulted an attorney about their problem (App. 93). He immediately prepared a grievance, which the employees signed, complaining about the Company's laying off employees and transferring operations in the middle of the term of the agreement and requesting payment of wages for at least the duration of the agreement and relocation rights for the employees based upon their seniority (Pls., Exh. 2, App. 35-36, 93, 261). In compliance with the collective bargaining agreement, on November 9, 1962, the employees, with representatives of the Grievance Committee, presented the grievance both orally and in writing to their department foremen (App. 174, 191, 198, 209-215, 218, 219, 226-227, 232-235, 244-245). The foremen replied that they themselves could do nothing and would have to consult with "higher ups" (App. 215, 235). The Local, therefore, proceeded to the second step of the grievance procedure and, on the same date, November 9, 1962, a majority of the Grievance Committee presented the grievance to the plant's general superintendent, Mr. Schmidt (App. 214, 215, 220, 235). Mr. Schmidt also said that he could no nothing for the men and would have to consult his superiors (App. 215, 235). Thereupon, the Local requested and Mr. Schmidt agreed to arrange a third step meeting (App. 167, 168, 215, 235). Mr. Schmidt arranged such meeting and subsequently notified the Local that it had been set for November 16, 1962 (App. 215, 221, 235-236, 237). The meeting was held as scheduled and attended by the representatives of the Local, the Company and District 50. At this meeting, District 50 joined the Company in contending that the Company was not violat

ing the contract and the grievance was therefore invalid. District 50 maintained this position also at a fourth meeting held on November 19, 1964, in an attempt by the Local to resolve the grievance.

On November 21, 1962, the members of the Local voted unanimously (App. 98, 204-205) to submit the grievance to arbitration, and that morning the Local officials presented a demand for arbitration upon the Company's plant manager, Mr. Panichi (App. 37-38, 98, 99, 204-205, 217, 218, 237, 261). Mr. Panichi stated that the Company would not arbitrate the grievance (App. 99-100). On November 23, 1962, the Local and the employees affected filed suit seeking to compel the Company to arbitrate the grievance (App. 3, 8).

The Trial Court, on February 13, 1963, at the conclusion of Petitioners' case, on motion of the Company and District 50, entered judgment on all issues for the Respondents (App. 5). Subsequently, as the result of unfair labor practice charges filed by the Local against the Company, the National Labor Relations Board determined that the Local was a party to the collective bargaining agreement (Pet. for R'hg., p. 8). Being apprised of this fact in a motion for a new trial (App. 256-257), the Trial Court, nevertheless, denied the motion (App. 258). In his Findings of Fact and Conclusions of Law the Trial Court held that:

> "The subject matter of the grievance . . . was not covered by any of the terms of the Wage Agreement, and the parties to that agreement did not contract to refer any of the issues contained in the grievance to arbitration." (App. 254).

"The Company did not breach the Wage Agreement by terminating its manufacturing operations on November 30, 1962, or by laying off its employees." (App. 254).

"District 50 (on behalf of the Local and its members) is the sole collective bargaining agent for the production and maintenance employees of the Company . . . ." (App. 253).

REASONS FOR GRANTING THE WRIT.

1. We in the Seventh Circuit need the assistance of this Court in attempted arbitration cases involving plant removals—terminating of employees. The decision of the Court below is in direct conflict with this Court's decision in *Wiley & Sons, Inc.* v. *Livingston*, 376 U. S. 543. And, it cannot be said that the instant case is an isolated one, for on June 30, 1964, the same Court refused to direct arbitration in the case of *Piano and Musical Instrument Workers, Local 2549* v. *W. W. Kimball Company*, No. 14446, ——— F. 2d ——— 56 LRRM 2644, another plant removal—terminating of employees case. Nor, was the Court below unaware of the *Wiley* decision, either in the instant case or in the *Kimball* one. On April 2, 1964, while the Petition for Rehearing was still pending below in the instant matter, the Court of Appeals was advised of this Court's March 30, 1964 decision in the *Wiley* case. Nevertheless, it denied the Petition. In its opinion in the *Kimball* case, the Seventh Circuit was more than aware of the *Wiley* decision as is demonstrated by its extensive discussion thereof, its comment that Plaintiff devotes eight pages of its Brief to it and its determination that *Wiley* is inapplicable because a "wholesale transfer" of employees to the removed plant in the *Kimball* case "could not have been made without difficulty". In each instance, rather than determine "arbitrability", *i. e.*, whether or not "the demands (for arbitration) are not so plainly unreasonable that the subject matter of the dispute must be regarded as non-arbitrable because it can be seen in advance that no award to the union could receive judicial sanction", the Court usurped the province of the arbitrator and, in effect, held that the Company had not violated the agreement.

The instant case involved a transfer by the Company of a substantial portion of its operations from its Chicago Heights, Illinois, plant, to its plants in St. Louis Missouri

and Jackson, Michigan, in the middle of the term of the collective bargaining agreement. The Court of Appeals affirmed the District Court's refusal to enforce the Local's demand that the Company arbitrate the question of various rights and obligations resulting from the transfer. In the *Wiley* case, a company with a collective bargaining agreement merged with a larger company which had none. This Court held that the new company was required to submit to arbitration the question of various rights and obligations growing out of the merger.[3] Clearly, if a demand for arbitration growing out of the effects of a merger of two separate employers is enforceable, then it would follow with all the more force that where, as here, there is a substantial transference of operations between different plants of the same employer, that the matter is arbitrable. And, certainly it cannot be said that the arbitration provisions of the contract specifically excluded from arbitration a dispute of the nature involved herein when the contract provided that any "differences" or any "local trouble of any kind" as to the "meaning and application" of the agreement would be resolved through a series of steps culminating in "final and binding" arbitration. Nor, is the instant case distinguishable from *Wiley* because here there are two unions involved whereas there, there was only one. Without reaching the question of whether arbitration was properly invoked (and we submit that it was) at best, such question is for an arbitrator to determine. *Wiley* succinctly clarified and announced that once it is determined that "The subject matter of a dispute (is subject) to arbitration, 'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the

3. The instant decision is also to be compared with the recent decision of the Ninth Circuit in *Wackenhut Corporation* v. *International Union, United Plant Guard Workers of America*, F. 2d ; 56 LRRM 2466 (June 10, 1964), which involved the sale and purchase of assets wherein the Court of Appeals, citing the *Wiley* decision, held that the new employer was bound by the arbitration clause in the agreement with the original employer.

arbitrator." "(W)hether grievance procedures or some part of them apply to a particular dispute, whether such procedures have been followed or excused, or whether the unexcused failure to follow them avoids the duty to arbitrate cannot ordinarily be answered without consideration of the merits of the dispute which is presented for arbitration." In *Wilen*, the company contended that the first two steps of the grievance procedure had not been properly invoked or followed. Here, the Company makes the same contention, except that it complains not about the first two steps of the procedure, but about the latter steps. It (along with District 50) contends that the matter was not properly submitted to arbitration because of the refusal of District 50 (for whatever reason) to participate in the submission. As in *Wilen*, the Petitioner here contends that the alleged failure to properly submit a matter to arbitration, even if true, would not be fatal to a demand to have the issue determined in arbitration. Moreover, here, the Local points to the fact that it is a party signatory to the collective bargaining agreement, that it administered the agreement, selected the grievance committee, and was responsible for the negotiations; that it obviously would not have subordinated its sole contractual remedy of arbitration, where the job survival of all of its members was threatened (the Local represented only employees at the Chicago Heights plant), to an obviously hostile International which at best signed the agreement only "on behalf of" the Local. Nor, can an employer be heard to object to the submission to arbitration of a dispute well within the subject matter of the contract and not expressly excluded by the arbitration provisions thereof where he has covenanted to maintain the *status quo* (and not withhold any work from the employees) during the resolution of any differences and agreed that work be performed only by employees in the bargaining unit. Certainly, with such requirements in the contract—and with an exceptionally broad definition of a grievance or dispute—can it be said that the subject matter of the grievance was not within the contemplation of

the parties when they arrived at the agreement or was excluded from same? And what then remains except a contention that procedurally the matter was not properly submitted to arbitration? And this, directs *Wiley*, is for an arbitrator to determine along with the other issues submitted to him.

2. Wholly apart from any other consideration, a serious conflict exists between two forums having concurrent jurisdiction.[4] In processing's the Local's refusal to bargain unfair labor practice charge, the National Labor Relations Board determined that the Local was a party to the collective bargaining agreement. The District Court ignored this finding and specifically held that District 50 was the *sole* collective bargaining agent for the Company's employees. The Court of Appeals affirmed the District Court. We are now confronted with a situation where the Local has been found to be a collective bargaining representative by the exclusive agency authorized by Congress to make such determination, *i. e.*, the National Labor Relations Board, but yet the District Court and the Court of Appeals have frustrated any meaningful fruition of such representation by holding that this representative (the Local) cannot enforce the arbitration provisions of its agreement. And, the result here prevents accomplishment of what the National Labor Relations Board has determined the Local do, *i. e.*, administer its collective bargaining agreement. The basic policy underlying the National Labor Relations Act has been equally thwarted for the Congressional purpose was to avoid industrial strife by setting up machinery for representatives of employees to negotiate, administer and enforce collec-

4. *Teamsters* v. *Lucas Flour Co.*, 369 U. S. 95; *Dowd Box Co.* v. *Courtney*, 368 U. S. 502; *Atkinson* v. *Sinclair Refining Co.*, 370 U. S. 238; *Smith* v. *Evening News Ass'n.*, 371 U. S. 195.

tive bargaining agreements. If this is so, where then does the result below leave us? The Local is the collective bargaining representative. But when it comes to enforce the arbitration provisions of the agreement coming about by reason of its representation, it is no longer the collective bargaining representative. And, where does such a dichotomy fit into the overall complex of the requirement that federal law must be fashioned from the policy of our national labor laws (*Textile Workers Union* v. *Lincoln Mills*, 353 U. S. 448)—the National Labor Relations Act obviously being such a national law? It clearly serves no useful purpose to find that the Local is a collective bargaining representative for the purpose of negotiating a contract, but not a representative for the purpose of enforcing the contract it negotiated. Moreover, the remedy available to the employees represented by the Local via the National Labor Relations Board, in the instant case is no substitute for the remedy available through the contract, for if bargaining could have enforced the rights guaranteed in the contract[5], this matter would not now be in the courts.

We urge that it is essential that this Court answer the question of the effect a court must give to the National Labor Relations Board's determination here that the Local is a party to the collective bargaining agreement. The answer to the question, we submit, may well highlight, as we suggest, that the Board's determination is merely another indicia of the fact that the Court of Appeals was in error: that District 50 whose only act was to sign the contract "on behalf of" the Local Union, cannot align itself with a recalcitrant employer to thwart arbitration. The es-

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5. Moreover, no offer whatsoever has been forthcoming from the Company as regards making some provision for these employees, and it will soon be two years since the employees were terminated and the work transferred.

sential point may be—and we suggest it is the only approach compatible with existing decisions of this Court—that to the extent the subject matter is clearly covered by the agreement and not excluded by the arbitration provision thereof, the contention of the Company here that it is not required to arbitrate, can only be resolved when an arbitrator considers whether or not, based upon the total complex, District 50's cooperation was necessary to process a grievance beyond the initial steps. And, this places the matter squarely within the *Wiley* decision as to whether or not the procedure was appropriately followed. In the final analysis the wisdom of *Wiley* permeates this entire case. From a standpoint of overall national policy, arbitration and its ameliorating effect represent our country's answer to industrial strife. And, as regards the individual employee caught up in the turbulence of the upheaval the instant situation creates for him, arbitration, as requested by his Local Union, represents the only possible effective remedy.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Chicago, Illinois,
July 28, 1964.

APPENDIX

IN THE

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

No. 14200 · SEPTEMBER TERM, 1963—JANUARY SESSION, 1964

LOCAL UNION NO. 12405, DISTRICT 50, UNITED MINE WORKERS; JOSEPH J. PIUNTI; ROSS PAVONE; MELVIN WOODRUFF; WAYNE HICKMAN; PASQUALE DE FIORE; DONALD BAKER; HENRY STRACZEK; CARL BAUR; LOWELL WHITE; JOHN BRANDT; ODIS PARTIN; NORBERT KOELLING; WALKER WIRTH; WALTER NIEDERT; JIMMY NIEDERT; WILLARD JONES; LEO DOUD, SR.; JOHN MARTISEK; GERALD HAYES; JEFF YOUNG; JERRY MIDDLETON; THEODORE SCHROEDER; MARTIN WOZNY; LOUIS PINO; RUDOLPH VANKO; HANS MARQUARDT; JOE GECHUS; HARRY TRAMM; WILLIAM PRALLE; BAZYL KLIMOWICZ; CHARLES WITT; CLEM DENNIS; WILMER KOELLING; GLENN IRWIN; MILLER PRINCE; STANLEY ZAPOTOCZNY; JOE MOBLEY; WALTER NYKIEL; CARL HENSHAW; FRANK DURANCZYK; and EDWARD ROHR,

Plaintiffs-Appellants,

vs.

MARTIN MARIETTA CORP., a Maryland Corp., District 50, UNITED MINE WORKERS OF AMERICA,

Defendants-Appellees

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

March 3, 1964

Before HASTINGS, *Chief Judge*, and KNOCH and CASTLE, *Circuit Judges*.

KNOCH, *Circuit Judge*. Plaintiff, Local Union No. 12405, District 50, United Mine Workers, hereinafter called the "Local," brought suit in the United States District Court, pursuant to § 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. 185, to enforce the arbitration provisions of a collective bargaining agreement made with defendant, Martin Marietta Corp., hereinafter called "Martin." The Local also sought damages for alleged breach of contract, and a temporary restraining order enjoining Martin from closing down its Chicago Heights, Illinois, plant and laying off its employees there, pending arbitration. The individual plaintiffs are employees of Martin at the Chicago Heights plant who filed a grievance, described below, which, inter alia, questioned Martin's right to terminate operations at its Chicago Heights plant and to lay off its employees there.

Another aspect of the case, distribution of certain pension funds, was involved in the District Court proceedings, but has been specifically excluded from the notice of appeal.

District 50, United Mine Workers of America, hereinafter called "District 50," the International with which the Local was affiliated, intervened as a defendant in the District Court. On motion of Martin and District 50, at the close of plaintiffs' evidence in the District Court, judgment was entered for the defendants. This appeal followed.

Martin's predecessor had a history of collective bargaining going back through 1941. The current agreement was entered into May 16, 1961, and was signed by the Pressitte Division, American-Marietta Company, (which later merged with the Martin Company to form the Martin Marietta Corp., which assumed all contractual obligations) through its plant manager; by District 50 "on behalf of Local Union #12405, of the United Mine Workers of Amer-

ica" through its regional director and its field representative; and, was also signed, although they were not specifically named as parties to the contract, by the Local through its president, a plaintiff in this action; by the "negotiating committee" all of whom are also plaintiffs here; and "approved" by the president of District 50.

In September 1962, Martin wrote the Regional Director of District 50, with a copy sent to the President of the Local, all of whose members were employees at the Chicago Heights plant, that Martin would cease operations there, and hoped to close the plant by November 30, 1962.

The President and Vice President of the Local met with Martin's plant manager, as did the Local's grievance committee. A third meeting with a field representative of District 50 occurred in September or October, 1962. There was an expression of great concern respecting the disposition of the pension and other funds. Nothing apparently was said about any transfer of operations. In October 1962, District 50's regional director, Mr. Bowers, promised to check on the funds and also told the Local's representatives that Martin had a right to shut down its plant if it wished to do so. However, without advising District 50, the Local engaged counsel and presented a grievance dated November 15, 1962. District 50 learned of this grievance the following day at a meeting of representatives from Martin, the Local, and District 50, including the members of the grievance committee and attorneys for Martin.

The grievance made no mention of any transfer of operations, merely questioning Martin's right to terminate operations and employment; in the alternative, requesting salaries for the duration of the current bargaining agreement, relocation at other Martin plants and relocation expenses; and distribution of the pension monies. A copy of the

grievance was sent to District 50 with a letter dated November 15, 1962, which stated that the first three steps of the grievance procedure set out in the collective bargaining agreement had been taken. It has since been argued that the November 16, 1962, meeting was the third step. District 50's president replied to this letter that the first two points of the grievance were subject to the bargaining agreement between District 50 and Martin and that plaintiffs' attorney could not bargain with Martin on these issues because he did not represent District 50; nor could he bargain as to the third point because he did not represent any party to the Pension Agreement.

At the meeting on November 16, 1962, District 50 and Martin both characterized the grievance as invalid. Most of the meeting was devoted to discussion of the pension fund which the Local wished to have split equally among all the employees. Martin asserted that there was no provision in the bargaining agreement for severance pay and that transfers of employees with preservation of seniority was not feasible in this instance because the other plants were all in operation, staffed and organized with their own unions.

Plaintiffs' attorney was excluded from the meeting on November 16 and from the following meeting on November 19, 1962. At a membership meeting on November 21, 1962, the Local decided to demand arbitration. A copy of their "demand" was presented to Martin's plant manager, who refused to recognize it as such, and on November 23, 1962, plaintiffs filed their aforesaid complaint in the U. S. District Court against Martin, seeking arbitration and damages for breach of contract, including as such breach the refusal to distribute the pension fund.

When District 50 was allowed to intervene as a defendant, it set out in its answer and in its cross-claim for declaratory judgment, that it was the sole bargaining representative for members of the Local under the agreement with Martin, that it was still engaged in negotiation of the first two points of the grievance, no impasse having been reached, and that nine pensioners with vested interests in the pension fund were indispensable parties to any disposition of the pension fund.

Although nothing was apparently said to District 50 about transfer of operations, plaintiffs asserted in the complaint and in their brief on appeal that Martin was not going out of business in Chicago Heights but was merely transferring most of its operations from Chicago Heights to other plants. Plaintiffs' counsel agreed in the District Court that Martin did have a right to go out of business or discontinue "the work which had been done in the Chicago Heights operation" (as District 50 representatives had advised the Local) and that he would not object to that. The District Court did not find however that there was any transfer of operations from the Chicago Heights plant to other plants. There was evidence to support the District Court's finding that:

> 22. In November and December, 1962, and thereafter, the Company disposed of the operating equipment of its Chicago Heights, Illinois, plant by selling some items to outside persons, by transferring some items to its Jackson and St. Louis plants, and by scrapping the rest.

The pension fund question, as indicated above, has been disposed of in the District Court. A number of other issues have been presented which we will not reach. We find the District Court's decision that District 50 was the sole collective bargaining agent with the exclusive power to re-

fer a grievance to arbitration (with which conclusion we agree) dispositive of this appeal.

Under the collective bargaining agreement with Martin, only the "Union" may refer grievances to arbitration. The agreement sets out the parties thereto as:

> PRESSTITE Division, AMERICAN-MARIETTA COMPANY, whose plant is located at Chicago Heights, Cook County, Illinois (hereinafter referred to as the "Company") and DISTRICT 50, UNITED MINE WORKERS OF AMERICA, on behalf of Local Union No. 12405 (hereinafter referred to as the "Union")

There are a number of provisions throughout the agreement, which, in our opinion, show that District 50 is the "Union," e. g. "Union Dues" are to be sent to District 50 in Washington, D. C., which is to furnish written assignments; the fourth step of the grievance procedure outlined in the agreement refers to the field representative and the regional director of the "Union," and the Local has no such officers. The wording of the pension fund which is entitled:

> The District 50, United Mine Workers of America and Keystone Asphalt Products Company, a Division of the American-Marietta Company Pension Agreement

also bolsters the conclusion that the "Union" is District 50 and not the Local. The latter is designated as "Local Union," for example, in the reference to a joint committee selected by the Union and the Company to administer the pension fund, two to be appointed by the Company and two "by the Administrative Officer of District 50 • • • one of whom shall be a member of the said Local Union • • •"

Plaintiffs contend that District 50 has merely made this contract "on behalf of" the Local and that it is the Local which is "hereinafter referred to as the 'Union'": that District 50 is at most an agent for the Local as the principal whose will must prevail in the event of conflict between the agent and its principal. Analogous arguments have been advanced for individual members of a union as the principals for whom the union acts as agent in making a contract with a company. We cannot agree. We find persuasive the reasoning in *Remak* v. *Electric Auto Lite Co.*, 44 LC 25,779, Pa. Ct. of Com. Pleas, 1961, where the Court said:

> The collective bargaining agreement is a two-edged sword. On the one hand, it obliges the employer to negotiate with the union as the sole bargaining agent of the employees. On the other hand, it generally bars the employees from harassing employers with the grievance procedures, arbitration, and resort to the courts unless the *bargaining agent*, not the employee acting independently, avails itself of the procedures prescribed in the collective bargaining agreement. [The Court's own emphasis.]

and in *Ostrofsky* v. *United Steel Workers of America*, D., Md., 1959, 171 F. Supp. 782, 790, where the Court noted that:

> A union's right to screen grievances and to press only those it concludes should be pressed is a valuable right, and on balance it benefits all employees. Professor Cox has pointed out [Rights Under a Labor Agreement, 69 Harv. L. Rev. 601] that there are "strong reasons for concluding that the bargaining representative ought to have power under a broad industrial agreement to control the prosecution of claims for breach of contract, whether by pressing grievances, invoking arbitration, or instituting legal proceedings." 69 Harv. L. Rev. at 625.

which is cited with approval in *Black-Clawson Co., Inc.* v. *International Ass'n of Mach.*, 2 Cir., 1962, 313 F. 2d 179, 186.

Plaintiffs invite our attention to *Electrical Workers* v. *Oliver Corporation*, 8 Cir., 1953, 205 F. 2d 376, where the introductory paragraph of the agreement recited that it was executed by and between the Company and the International Union "on behalf of and in conjunction with" the Local Union "hereinafter referred to as the Union." The Court there held that the word "Union" subsequently appearing in a no-strike clause meant the Local Union. The quoted words show that the contract in *Oliver* was made by the International *and* the Local Union. The Court construed the contract as imposing several and not joint obligations on the defendant International and Local Unions and held that:

> [T]he failure of the Local Union before a strike or cessation of work to post the required notice on the plant bulletin boards and take the required strike vote was a material violation of the agreement; that the International Union, as a party to the agreement in conjunction with and on behalf of the Local Union was at least bound not to cause, induce, or promote a breach of the Local Union's obligations under the agreement.

Thus, in *Oliver*, the word "union" could refer to the International and the Local Union as indicated by the context.

We see no inconsistency in designating as "Union" committee the grievance committee and the negotiating committee regardless of whether or not they are selected by the Local, as all members of the Local are also members of District 50.

Under the procedures set out in the collective bargaining agreement, the first and second steps of the grievance

procedure do not require District 50 participation. A representative of District 50 must join in the third step. At the fourth step:

> The grievance will then be referred for the consideration of the local grievance committee, the Field Representative and the Regional Director for the Union and the President of the Company or any of his representatives. * * * If a grievance is not satisfactorily adjusted * * * in step four (4) above, then it may be referred by the Union, * * * to arbitration.

District 50 was indispensable to step four which could not be bypassed by plaintiffs' own attempt to demand arbitration.

Adoption of plaintiffs' theory would leave Martin in an untenable position, having to choose at its peril whether to continue or to abandon pending negotiations with one representative of its employees to take up inconsistent demands with another. That is not the way to industrial peace.

We have weighed all other arguments urged on us by the plaintiffs and have studied all the references they have cited. We find no justification for reversing the decision of the District Court. The judgment is affirmed.

AFFIRMED.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.